

Message Text

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ACTION EA-12

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C O N F I D E N T I A L MANILA 01971

FOR EA ONLY

E.O. 12065: GDS 1/29/85 (ELLSON, DONALD C.) OR-P
TAGS: SHUM, RP
SUBJECT: BENIGNO AQUINO CASE: STATUS OF COURT PROCEED-
- INGS

REF: STATE 020433

1. (U) IN A WORD, CURRENT STATUS IS THAT A REQUEST FOR A
RESTRAINING ORDER ON AQUINO'S MILITARY TRIAL IS STILL
BEFORE THE SUPREME COURT; IT HAS BEEN THERE SINCE
DECEMBER 2, 1977. HIS TRIAL BY A MILITARY TRIBUNAL HAS
BEEN RECESSED WHILE THE SUPREME COURT CONSIDERS THE
REQUEST.

2. (U) BACKGROUND: AQUINO WAS ARRESTED SEPTEMBER 22,
1972. CHARGES OF MURDER, SUBVERSION AND ILLEGAL POSSESSION
OF FIREARMS WERE FILED ON AUGUST 23, 1973, AND HIS TRIAL
BY A MILITARY TRIBUNAL BEGAN ON AUGUST 3, 1976. THE
PROSECUTION RESTED ITS CASE ON MARCH 25, 1977. AQUINO
REFUSED TO PRESENT A DEFENSE UNTIL THE SUPREME COURT HAD
ACTED UPON A HABEAS CORPUS PETITION FILED BY HIS MOTHER
QUESTIONING THE JURISDICTION OF THE MILITARY TRIBUNAL. ON
NOVEMBER 25, 1977, THE TRIBUNAL AGAIN ASKED AQUINO TO
PRESENT HIS DEFENSE, AND AQUINO AGAIN REFUSED. THE TRI-
BUNAL THEN SAID IT CONSIDERED THE CASE SUBMITTED FOR
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JUDGMENT AND FOUND HIM GUILTY ON THE BASIS OF THE PROSECU-
TION EVIDENCE. HE WAS SENTENCED TO DEATH BY FIRING SQUAD
(77 MANILA 18681). ON NOVEMBER 29, PRESIDENT MARCOS
ORDERED THE TRIAL "REOPENED" TO GIVE AQUINO "ANOTHER
OPPORTUNITY" TO PRESENT ARGUMENTS IN HIS DEFENSE (77 MANILA
18857). ON DECEMBER 2, AQUINO'S MOTHER FILED AN URGENT
MOTION BEFORE THE SUPREME COURT FOR A RESTRAINING ORDER ON

THE MILITARY TRIAL, SINCE HER PREVIOUS MOTIONS --
FOR DISMISSAL OF THE CASE OR TRANSFER TO A CIVILIAN COURT
-- WERE STILL UNRESOLVED (77 MANILA 19057). NONETHELESS,
ON DECEMBER 5, THE MILITARY TRIBUNAL RESUMED THE TRIAL.
IT NOTED THAT IT WAS NOT A RETRIAL BUT A REOPENING OF THE
EARLIER TRIAL AND THAT THE GUILTY VERDICT AND DEATH SENTEN-
CE HAD NOT BEEN VACATED (77 MANILA 19290). ON DECEMBER 7,
THE SUPREME COURT SCHEDULED A HEARING FOR DECEMBER 14 TO
CONSIDER AQUINO'S MOTHER'S PETITIONS ON HIS BEHALF
(77 MANILA 19553). ON DECEMBER 15, THE SUPREME COURT
BEGAN ITS HEARING AND ASKED THE MILITARY COMMISSION TRYING
THE CASE TO REFRAIN FROM CONTINUING "UNTIL THE COURT SHALL
HAVE RESOLVED THE MOTIONS FOR THE ISSUANCE OF A RESTRAIN-
ING ORDER." IT ADDED POINTEDLY: "THE COURT EXPECTS THE
COMMISSION TO RESPECT THIS." THE COURT GAVE BOTH SIDES
45 DAYS TO RESPOND TO VARIOUS WRITTEN QUESTIONS (77 MANILA
19798). ON FEBRUARY 7, 1978, THE COURT GAVE EACH SIDE 30
DAYS TO PREPARE A WRITTEN MEMORANDUM STATING ITS POSITION
ON THE CASE AND ANOTHER 20 DAYS (I.E., UNTIL LATE MARCH)
TO PREPARE A REBUTTAL TO THE OTHER SIDE'S MEMORANDUM
(78 MANILA 2260).

3. (C) THE DEADLINE FOR THE SUBMISSION OF WRITTEN ARGU-
MENTS WAS JUST BEFORE THE APRIL 7 INTERIM LEGISLATURE
ELECTIONS, IN WHICH AQUINO WAS AN OPPOSITION CANDIDATE.
WE UNDERSTAND PRIVATELY FROM SUPREME COURT JUSTICES THAT
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THE COURT HAS NOT TAKEN UP THE CASE SINCE THEN BECAUSE OF
EXPECTATIONS THAT MARCOS MIGHT RELEASE AQUINO MOMENTARILY.
THE STRONGEST SUGGESTED DATE FOR HIS RELEASE WAS JUNE 12,
THE OPENING OF THE LEGISLATURE (78 MANILA 9762); OTHER
POSSIBLE DATES HAVE BEEN MARCOS' BIRTHDAY (SEPTEMBER 11),
THE SIXTH ANNIVERSARY OF MARTIAL LAW AND AQUINO'S IMPRISON-
MENT (SEPTEMBER 22), AQUINO'S BIRTHDAY (NOVEMBER 27),
CHRISTMAS AND NEW YEARS. IN THE MEANTIME, FELLOW OPPOSI-
TIONISTS HAVE BEEN DEALING DIRECTLY WITH MARCOS, TRYING TO
NEGOTIATE AQUINO'S RELEASE. HIS LAWYERS HAVE NOT PRESSED
FOR FURTHER SUPREME COURT ACTION ON THE CASE WHILE THESE
NEGOTIATIONS HAVE BEEN IN PROGRESS (78 MANILA 22941).
ONE OF AQUINO'S LAWYERS AND FELLOW OPPOSITIONISTS, EX-
SENATOR LORENZO TANADA, RECENTLY RECEIVED A HANDWRITTEN
LETTER FROM MARCOS (MANILA 1847) AND WISHES TO REPLY TO IT
BEFORE AQUINO'S LAWYERS TAKE FURTHER STEPS. EX-SENATOR
JOVITO SALONGA TOLD EMBOFFS JANUARY 27 THAT AQUINO HAS
AGREED TO THIS. HOWEVER, IF MARCOS CONTINUES TO BE UN-
WILLING TO RELEASE AQUINO, SALONGA SAID, THEN HIS LAWYERS
MIGHT RECOMMEND ACTION TO GET A SUPREME COURT DECISION.
BUT HE WAS NOT AT ALL SANGUINE THAT THE COURT WOULD RULE
FAVORABLY FROM AQUINO'S POINT OF VIEW, GIVEN ITS MAKEUP

AND PAST RECORD.

4. NOTE EA ONLY CAPTION. MURPHY

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